THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.19402 of 2005

05.9.2005

Between:

Sardar Khan, S/o.Azmat Khan, Private Consultant,

Irfannagar Colony, Ward No.28, Siripur Kagaznagar, Adilabad.

… Petitioner.

AND

1. The Government of Andhra Pradesh, rep. By its Principal Secretary,

Municipal Administration & Urban Development Authority, Secretariat,

Hyderabad and four others.

… Respondents.

ORDER:

The petitioner is resident of Sirpur Kagaznagar Municipality. He is registered as a voter in Ward No.28 as alleged by him. He invoked the jurisdiction of this Court under Article 226 of Constitution of India seeking a declaration that the action of the respondents in reserving Ward No.28 of Kagaznagar Municipality to Scheduled Tribes as illegal and arbitrary, and for a consequential direction to the respondents to keep Ward No.28 unreserved for general category.

The case of the petitioner, in brief, is that while reserving Ward No.28 for Scheduled Tribes, the respondents did not follow A.P. (Division of Nagar Panchayats and Municipalities into Wards) Rules, 1994 and A.P. Municipalities (Reservation of seats in Municipal Councils and Nagar Panchayats) Rules, 1995 (hereafter called, Reservation Rules). It is also the case of the petitioner that in the earlier elections for three terms continuously Ward No.28 was reserved for Scheduled Tribes and therefore, reserving the same to Scheduled Tribes without following 'rule of rotation' is violative of Article 243-T and Article 14 of Constitution of India. In support of his contention, the petitioner has annexed the statement showing ward-wise & category-wise population of Kagaznagar Municipality. This would show that in Ward No.28 of Kagaznagar Municipality, there are 43 Scheduled Tribe people. He has also annexed the statement showing ward-wise percentage of population of Scheduled Tribes to the total population of the Wards in the descending order. According to this statement, there are 71 Scheduled Tribes amounting to 3.94% and if all the wards are arranged in the descending order, there are more number of Scheduled Tribes in Ward No.28 qualifying it for being reserved for Scheduled Tribes.

When the matter was listed before this Court, on 02.9.2005, the learned Standing

Counsel for Kagaznagar Municipality was directed to get instructions in the matter. Today, the learned Standing Counsel has placed before this Court the statements showing the total population of each ward and the number Scheduled Tribes in such wards. He is also placed before this Court the statement showing ward-wise percentage of population in descending order prepared by the Municipal Commissioner, Kagaznagar Municipality.

Heard the learned Counsel for the petitioner, Sri Ch.Ravinder, and learned Standing Counsel for Kagaznagar Municipality, Sri P.Radha Krishna. As per the Reservation Rules, the competent authority is required to reserve such number of seats to Scheduled Tribes, Scheduled Castes, Backward Classes and Women as required under Sections 8 and 10 of A.P. Municipalities Act, 1965. Rules 7 and 8 of Reservation Rules spell out the modalities for earmarking the ward/wards for SCs/STs/BCs and Women. They read as under:

> Rule 7: The seats reserved for Scheduled Tribes, Scheduled Castes, Backward Classes and Women shall be allotted by rotation to different wards in a Municipality. The reservation of seats shall be started afresh without any reference to the reservation of the seats made for earlier elections. Municipal Commissioner shall maintain a Register for this purpose in the form annexed to these Rules.
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> Rule 8: The Reservation of seats for members belonging to Scheduled Tribes, Scheduled Castes and Women in the Wards of the Municipalities shall be made with reference to the largest percentage of population of the said category to the total population of the ward in the descending order.

As a first step, the specified authority has to determine the population of each ward category-wise. At the second stage, the population of SCs, STs and Women in the wards of the Municipalities shall be arranged in the descending order and shall be reserved in favour of these categories with reference to larger percentage of population of the said category to the total population. After determining the number of seats reserved for STs/SCs/BCs, reservation for the seats not less than 1/3rd of such number shall be made for Women belonging to each ward of these categories.

The material placed before this Court would show that the third respondent herein determined the population of each ward category-wise taking 2001 census as basis and then arranged ward-wise population of STs as per their percentage to the total population. It was found that Ward No.28 with total population of 1803 has 71 STs, which occupies the first place in the statement arranged in descending order. Accordingly, the Ward No.28 was reserved.

Article 243-ZG bars the jurisdiction of this Court whenever there is a dispute regarding division of municipality into territorial constituencies called wards or allotment of seats to such wards or notification specifying the offices of Chairpersons of Municipalities reserved in accordance with reservation rules. I n **Channala Ramachandra Rao v. State of A.P.**, this Court considered in detail this question when there was a challenge to the Rules made in A.P. Municipalities (Reservation of Offices of Chairpersons in Municipal Councils and Nagar Panchayats) Rules,

1995. Repelling the challenge, this Court laid down as under:

> In the light of the decided cases, the principles that emerge may be summarized.
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> i. By reason of clause (a) of Article 243-ZG, the Division of Municipality into territorial constituencies called wards or allotment of seats to such wards or the notification specifying the offices of Chairpersons of Municipalities reserved to persons belonging to STs., SCs., and/or BCs., cannot ordinarily be challenged under Article 226 of the Constitution.
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> ii. In view of the embargo placed by clause (a) of Article 243-ZG, a law providing for delimitation of constituencies and allotment of seats to such constituencies made by the State Legislature under clause (6) of Article 243-T read with clause (2) of Article 243-ZA and the Entry 5 of List II of Seventh Schedule to the Constitution cannot be called in question under Article 226 of the Constitution.
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> iii. The principles (i) and (ii) are subject to the condition that if the delimitation notification is arbitrary and in the sense that before delimitation no objections were invited and no hearing was given to a limited extent, the same is amenable to judicial review by this Court under Article 226 of the Constitution.

The view of this Court in **Channala Ramachandra Rao v. State of A.P.** (supra) was affirmed by a Division Bench of this Court in **K.Pamulu v. Collector and District Election Authority, Guntur** as well as Full Bench of this Court in **A.P. Sarpanchas Association v. Govt. of A.P.**. Therefore, whether it is division of Municipality in territorial constituencies/wards or reservation of wards or offices of Chairpersons, a writ petition ordinarily would not be maintainable. However, having regard to the material placed before this Court, this Court considered the matter on its merits and does not find any substance in the writ petition.

The writ petition is, accordingly, dismissed. There shall be no order as to costs.

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(**V.V.S.RAO,J**)

September 05, 2005.

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